

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 122 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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ABDUL AHMED MANIYAR

Versus

STATE OF GUJARAT  
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Appearance:

MR MM TIRMIZI for Petitioner

MR. H.H. PATEL, APP for Respondent No. 1, 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/12/1999

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. H.H. Patel, learned APP for the respondents.

2. The petitioner is an externee who was externed by an order dated 17.11.1998 passed by the Deputy

Commissioner of Police, Crime, Ahmedabad City, Ahmedabad in exercise of powers under Section 56-B of the Bombay Police Act. Prior to passing of the said order, notice under Section 59 of the Bombay Police Act was given on 11.3.1998.

3. The petitioner came to be externed on account of his activities which were found to be sufficient for externing the petitioner from the area on the allegation that he is engaged in or is about to be engaged in commission of offence involving force or violence. The authority alleged in the grounds that the petitioner extorts and loots money from the members of public. He uses automobile vehicle and does not pay for the same and the order was passed.

3.1 The order was challenged in appeal as provided under Section 60 of the Bombay Police Act and the appeal was dismissed by the Government by an order dated 30.1.1999.

4. The petitioner in this petition challenges the order of externment on ground of delay and non-application of mind.

5. Mr. Tirmizi, learned advocate for the petitioner submitted that a show cause notice was issued on 11.3.1998 and the externment proceedings were lastly held on 5.8.1998. The order came to be passed on 17.11.1998 i.e. after a lapse of 3 1/2 months. This delay is not explained and therefore the order is bad.

5.1 As regards non-application of mind, Mr. Trimizi submitted that there was no material before the authority for arriving at satisfaction for the need for exercise of power under Section 56-B and no material was supplied to the petitioner in this regard.

6. Mr. Patel, learned APP, has opposed this petition. He did not have any material on hand to indicate that an affidavit is filed. The affidavit in fact is not on record. It is, however, tendered to the court during the course of dictation of the judgement.

7. Mr. Patel has not been able to meet with the arguments advanced on behalf of the petitioner.

7.1 This appears to be a case with a gross non-application of mind and sluggish movement of the papers. Notice was issued on 11.3.1998. In that notice the petitioner was called upon to appear and show cause

against the proposed externment on 11.3.1998 itself. This reflects two aspects. One that there is gross non-application of mind and/or if there is application of mind there is gross infringement of right of making an effective representation provided under Section 59 of the Bombay Police Act. Reasonable time has to be given to the petitioner for showing cause against proposed order and therefore the non-application of mind is reflected from the beginning. If the order is seen it does not divulge any material which is considered by the externing authority for the action. Same is the case in the case of show cause notice. The only allegations are that the petitioner extorted money and does not pay for the vehicle used. On what basis this conclusion is arrived at and the allegations are made is not stated either in the show cause notice or in the order of externment. The order therefore is found to be bad in law and cannot be sustained.

8. The order also suffers from the defect of delay. It has been categorically contended by the petitioner before the appellate authority as can be seen from the order of the appellate authority that the last date in the externment proceedings was 5.8.1998 and the order as passed on 17.11.1998. This lapse of about 3 1/2 months has remained unexplained.

9. At this stage the affidavit in reply which is tendered is accepted. It appears from the affidavit that it was sworn in 12.4.1999 and copy was served on the petitioner's advocate on 21.4.1999. Still it is tendered only during the course of dictation of the judgement. No reasons are shown therefor.

10. A perusal of the affidavit indicates that the externing authority has not dealt with the question of delay in specific terms. What is stated in this regard is "I say that no delay is caused in passing the order of externment and whatever reasonable period is taken for collecting the materials cannot be considered as delay caused in passing the order of externment."

10.1 It is clear from the order of the appellate authority that the last hearing of the externment proceedings was 5.8.1998. It therefore is very clear that the externment order dated 17.11.1998 was passed after about 3 1/2 months which delay ought to have been explained by the concerned authority. This gross delay also affects the order of externment.

11. From the above discussion it is clear that there

is non-application of mind by the external authority from the stage of issuance of notice till the order is passed as the order is silent about the basis of the allegations. This also has resulted into depriving the petitioner of showing cause against the proposed action which is the purpose of issuing of notice under Section 59. The petition therefore deserves to be allowed.

12. It may be noted that in the affidavit in reply the authority has stated in para 6 that the statements of the witnesses were recorded and the identity was not disclosed as they were not willing to give any evidence against the petitioner because of apprehension of danger to their lives and properties. These statements were verified by the responsible police officers. Therefore, in absence of copies of the statements being provided to the petitioner, the order could not have been passed and the order passed would stand vitiated.

The petition is therefore allowed. The order of externment is set aside forthwith. Rule made absolute. No order as to costs.

(A.L. DAVE, J)

(pkn)